

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201601983	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/05/2015 7:01 PM, Thursday, 10/15/2015	Location of Incident: Bruckner Boulevard and Zerega Avenue	Precinct: 43	18 Mo. SOL 4/5/2017	EO SOL 4/5/2017	
Date/Time CV Reported Wed, 03/09/2016 11:07 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 03/09/2016 11:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ricky Smalls	07907	939480	PSA 8
2. POM Derrick Kreckmann	26021	954032	PSA 8

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Andrew Lombardi	22123	954076	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.POM Derrick Kreckmann	Abuse: Police Officer Derrick Kreckmann searched the vehicle in which § 87(2)(b) was an occupant.	
B.POM Ricky Smalls	Abuse: Police Officer Ricky Smalls issued a summons to § 87(2)(b)	

Case Summary

On March 9, 2016, § 87(2)(b) filed this complaint with the CCRB online (BR 01).

On October 5, 2015, at approximately 7:01 p.m., § 87(2)(b) was driving southbound on the Hutchinson River Parkway, taking Exit 1 to Bruckner Boulevard in the Bronx, when he was pulled over by three officers of PSA 8 (who, at the time of this incident, were on their way to their Housing posts): PO Andrew Lombardi, PO Ricky Smalls, and PO Derrick Kreckmann. During the vehicle stop, PO Kreckmann searched § 87(2)(b)'s vehicle (**Allegation A**).

§ 87(2)(b) provided video footage of this incident in a series of seven clips, only six of which are relevant to the investigation, from a dashboard camera inside his vehicle. The videos capture the vehicle stop, including the vehicle search (BR 09 to 15):



2016-05-05_11-39-27.mp4



2016-05-05_11-48-43.mp4



2016-05-05_11-55-05.mp4



2016-05-05_12-15-15.mp4



2016-05-05_12-18-44.mp4



2016-05-05_12-33-04.mp4

PO Lombardi issued § 87(2)(b) a summons for driving too slowly on a highway (BR 02). PO Smalls issued § 87(2)(b) an improper summons for disorderly conduct (**Allegation B**) (BR 03).

Mediation, Civil and Criminal Histories

- Although this case initially appeared eligible for mediation, during his telephone statement on March 10, 2016 (BR 04), § 87(2)(b) declined the option. In addition, § 87(2)(b) expressed his intent to file a lawsuit about this incident, which rendered the case ineligible for mediation.
- As of May 6, 2016, § 87(2)(b) has not filed a Notice of Claim with respect to this incident (BR 05).
- On February 1, 2016, the summons PO Smalls issued to § 87(2)(b) was dismissed (BR 06). § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 08).
- PO Smalls has been a member of the service for 10 years. There are 13 prior allegations against him stemming from six prior cases that occurred between 2006 and 2012, none of which was substantiated. § 87(2)(g)
- PO Kreckmann has been a member of the service for three years. Insofar as this is the first allegation of an improper vehicle search against him, § 87(2)(g) There are 29 allegations against him stemming from 13 prior cases, the following of which were substantiated:
 - In CCRB case 201405312, two separate allegations of frisks and two separate allegations of searches of persons were substantiated. The Board recommended Command Discipline A. The NYPD Disposition is unknown.

Potential Issues

- § 87(2)(b) did not cooperate with the investigation. On March 10, 2016, an attempt was made to contact § 87(2)(b)'s voicemail box was full and could not accept messages. On March 10, 2016, a please-call letter and email were sent to § 87(2)(b). On March 10, 2016, § 87(2)(b) called back, provided a phone statement (BR 04), and scheduled to provide an in-person statement on March 21, 2016. On March 21, 2016, § 87(2)(b) called before his appointment and said he would need to cancel. On March 21, 2016, a second call was placed to § 87(2)(b) and again his voicemail box was full and could not accept messages. On March 21, 2016, a second email was sent to § 87(2)(b). On March 22, 2016, a second please-call letter was mailed to § 87(2)(b). Between March 23, 2016, and March 28, 2016, three further calls were placed to § 87(2)(b). Each time, his voicemail box was full and could not accept messages. Between March 28 and March 29, 2016, Lexis Nexis searches revealed four additional possible phone numbers for § 87(2)(b). When contacted, these numbers were found either not to be in service or to belong to individuals who did not know § 87(2)(b). § 87(2)(b) has not to date responded to attempts to schedule him for an in-person statement.

Findings and Recommendations

Allegations not pleaded

- **Vehicle stop:** Because § 87(2)(b) was issued a summons for the infraction for which he was stopped, to plead an allegation of a vehicle stop would constitute a summons dispute. It consequently has not been pleaded.
- **Interference with recording:** § 87(2)(b) said that while he was still inside the vehicle he grabbed his cellphone and tried to record the incident, at which time PO Smalls removed the phone from § 87(2)(b)'s hand and tossed it into the front seat. Video footage reflects that once § 87(2)(b) was removed from the vehicle PO Smalls removed the cell phone from his person (it is not possible from the video to tell more specifically where PO Smalls retrieves the cell phone) and placed it back onto the front seat before handcuffing § 87(2)(b). § 87(2)(b), § 87(2)(g)

Furthermore, video footage at no point suggests that § 87(2)(b) ever stated any intent to PO Smalls to use the cell phone to record the incident, further establishing that by removing the cell phone from his person PO Smalls had no intent to prevent him from recording. As such, no corresponding allegation has been pleaded.

- **Vehicle Search:** In his CCRB statement, PO Lombardi acknowledged searching the vehicle after § 87(2)(b) was removed from it by leaning in through the open driver side door and looking at the center console, which was already open. Video footage at no point depicts PO Lombardi inside of the vehicle. After reviewing the video footage, PO Lombardi said he might have been confusing this incident with another. As such, no corresponding allegation has been pleaded.

Allegation A – Abuse of Authority: PO Derrick Kreckmann searched the vehicle in which § 87(2)(b) was an occupant.

It is not disputed that PO Kreckmann searched § 87(2)(b)'s vehicle.

As was discussed above, § 87(2)(b) provided a telephone statement (BR 04), but no sworn statement about what occurred. § 87(2)(b) did not see the search of his vehicle during the incident, as he was standing at the back of the vehicle when it occurred, but reviewed it later on the video from his dashboard camera. § 87(2)(b) thought that PO Smalls might have ordered PO Kreckmann to search his vehicle, or provided justification PO Kreckmann for the justification for the search, though § 87(2)(b) did not know what PO Smalls said specifically. § 87(2)(b) never consented to a search of his vehicle, nor was his consent requested.

All of the video files provided by § 87(2)(b) are timestamped incorrectly as occurring on February 3, 2014, at approximately 10 p.m. § 87(2)(b) provided a total of seven videos depicting segments of this encounter, six of which are relevant to this investigation, and are summarized below in chronological order.

Video footage from § 87(2)(b)'s dashboard camera shows that prior to the stop, § 87(2)(b) was driving southbound on the Hutchinson River Parkway in its rightmost lane (see above file labeled 2016-05_11-39-27 (BR 09)). As the speedometer is not depicted, it is impossible to ascertain the speed at which § 87(2)(b) was driving, though he does appear to be driving more slowly than the vehicles passing him in the lanes to his left. At 00:35 seconds, a brief police siren is heard. § 87(2)(b) takes Exit 1. At 1:16 minutes, another brief police siren is heard, and § 87(2)(b) pulls over to the shoulder. At 1:23 minutes, § 87(2)(b) stops his vehicle. At 1:30 minutes, § 87(2)(b) turns his dashboard camera to face the interior driver seat of the vehicle. § 87(2)(b) appears to be sitting still, though his hands are not visible to the camera.

At 1:45 minutes, there is a knock on a window. § 87(2)(b) turns his head to face the front passenger side. An officer, identified by the investigation as PO Kreckmann, says, "Hey, sir, how you doing? Could you roll the window all the way down? Could I get your license and registration and insurance please?" § 87(2)(b) replies, "No problem." At 1:51 minutes, § 87(2)(b) says, "Why are you pulling me over?" At 1:53 minutes, § 87(2)(b) shifts the dashboard camera to face the front passenger side window to show PO Kreckmann standing at the front passenger window, shining his flashlight into the vehicle. § 87(2)(b) again asks, "Why am I being pulled over, sir?" At 1:56 minutes, PO Kreckmann says, "Put your back windows down for me, too." At 1:59 minutes, the rear passenger window is lowered. PO Smalls' face is visible through the rear passenger window.

At 2:02 minutes, PO Kreckmann turns back to the front passenger window. At 2:05 minutes, § 87(2)(b) rolls both the rear and front passenger window up. PO Kreckmann asks, "Why are you rolling the windows...[unintelligible] down." At 2:09 minutes, § 87(2)(b) rolls down only the front passenger window, saying, "You saw if there was anything back there. I'm not putting no window down." PO Kreckmann twice orders him to put his window back down. § 87(2)(b) at 2:15 minutes says, "I'm not putting no windows down sir, I haven't done nothing wrong." PO Kreckmann two further times tells him to put his rear window down. At 2:19 minutes, § 87(2)(b) extends his hand forward into the camera's view towards the front passenger window. He appears to be holding documents. § 87(2)(b) says, "Here's my registration, my license." PO Kreckmann at 2:22 minutes tells § 87(2)(b) "You need to put the window down and then you can give me that." At 2:24 minutes, § 87(2)(b) says, "Sir, I'm not doing that." PO Kreckmann says something that is inaudible underneath § 87(2)(b). At 2:26 minutes, § 87(2)(b) says that he is recording the incident. PO Kreckmann says, "You can record it, that's fine." § 87(2)(b) continues to state that he has done nothing wrong and that he showed the officers that there was nothing back there.

At 2:39 minutes, an officer, identified by the investigation as PO Smalls, says, "Come out of the car, sir." § 87(2)(b) said, "I don't have to come out of the car." At 2:44 minutes, PO Smalls again says, "Come out of the car, sir." At 2:46 minutes, § 87(2)(b) rotated his camera to face PO Smalls, saying, "Sir, I've done nothing wrong." § 87(2)(b) is no longer fully depicted by the camera. PO Smalls at 2:48 says, "Leave your hands there, please." At 2:51 minutes, PO Smalls again says, "Please come out of the car, sir. I don't want to have to take you out of the car. You're not being compliant with us. We asked you for your license and registration..." At 2:55 minutes, § 87(2)(b) says, "Sir, I don't have to get out of my car. I'm being compliant. I'm giving you my license." § 87(2)(b) at 2:58 holds up his documentation in his hand. The video ends.

In the next video, which begins where the first ended (see above video labeled 2016-05-05_11-48-43 (BR 10)), § 87(2)(b) is still holding up his documents to PO Smalls. PO Smalls tells § 87(2)(b) "You're being very unsafe. Can you please exit the vehicle?" At 00:07 seconds, § 87(2)(b) appears to turn towards his right side, though his hands and arms are not depicted by the camera. PO Smalls says at 00:09 seconds, "Please don't reach for anything. Please don't reach for anything." At 00:12 seconds, § 87(2)(b) again says, "Come on, take my stuff," while holding his documentation up to PO Smalls. PO Smalls then reaches into the vehicle and appears to pull the seatbelt back, saying, "Come out of the car, sir." At 00:17 seconds, PO Smalls says more sternly, "Sir." PO Smalls and PO Lombardi then pull § 87(2)(b) out of the vehicle and move him towards the rear passenger door. At 00:30 seconds, PO Smalls appears to remove a cell phone from a part of § 87(2)(b)'s body that is not visible. PO Smalls then tosses the cell phone into the front seat of the vehicle. At 00:35 seconds, PO Smalls appears to remove his handcuffs from his belt and place them upon § 87(2)(b) though § 87(2)(b)'s body is eclipsed from view by the other officers.

§ 87(2)(b) is then evidently removed to the back of the vehicle, as he is no longer visible standing at its side. At 00:54 seconds, PO Kreckmann approaches the rear driver side door, opens it, and enters the backseat by 00:59 seconds. PO Lombardi stands at the front driver side door, and appears to place some of § 87(2)(b)'s documentation onto the front seat through the open driver side window without crossing its threshold. PO Kreckmann exits the backseat of the vehicle at 1:12 minutes. The remainder of the video depicts vehicles passing by, while indistinct voices are audible in the background. Some of the passing vehicles slow, but do not stop, and it is impossible to tell what causes them to slow.

In the third video, which begins where the second one ended (see above video labeled 2016-05-05_11-55-05 (BR 11)), PO Kreckmann approaches the driver seat from the rear. PO Kreckmann then enters the vehicle through its open driver side door. It appears that he might look at something on the front seat, but it is not clearly depicted in the video. PO Kreckmann remains inside the vehicle until approximately 00:33 seconds. The remainder of the video depicts vehicles passing by with indistinct voices audible in the background.

The fourth video, which begins where the third ended (see above video labeled 2016-05-05_12-15-15 (BR 12)) depicts only passing vehicles.

A fifth video depicts PO Kreckmann inside of the vehicle is a 23-second long clip that § 87(2)(b) provided that shows, at 00:13 seconds, PO Kreckmann enter the vehicle through the driver side door, possibly remove its keys, and place them on the roof of the vehicle (see above video labeled 2016-05-05_12-18-44 (BR 13)).

There is then a large chronological gap in the videos. The fifth is timestamped as ending at 10:11:17 p.m. The sixth video that § 87(2)(b) provided (see above video labeled 2016-05-05_12-33-04 (BR 14)) is timestamped as beginning at 10:26.38 p.m. There is no documentation of what occurred between 10:11.17 p.m. and 10:26.38 p.m. The final video depicts § 87(2)(b) already seated in his driver seat, driving away from the stop. Because attempts to reach § 87(2)(b) after he provided the video footage were not successful, it is unclear why he did not provide video footage from this gap.

PO Kreckmann (BR 16) said he remembered little of this incident, as he was interviewed roughly six months past the incident date, and as he frequently conducts car stops, estimating that he has conducted 50 in the past year and a few months that he has been assigned to PSA 8. PO Kreckmann did not recall where he was standing around the vehicle upon approach. PO Kreckmann believed that § 87(2)(b) seemed angry about the stop in that he asked why he was pulled over. PO Kreckmann did not remember if § 87(2)(b) yelled or cursed.

PO Kreckmann upon approach overheard PO Smalls repeatedly tell § 87(2)(b) to stop reaching around the vehicle. PO Kreckmann did not recall himself observing § 87(2)(b) reach around the vehicle. PO Kreckmann thought § 87(2)(b) was reaching towards the center console or the backseat, and believed that he knew § 87(2)(b) was reaching into those areas because PO Smalls specified in his commands to § 87(2)(b) “Stop reaching for the center console. Stop reaching to the backseat,” but again did not remember observing this himself.

PO Kreckmann believed that § 87(2)(b) did not immediately provide his identification, but that eventually § 87(2)(b)'s information was obtained before § 87(2)(b) stepped out of the vehicle. After providing his documentation, § 87(2)(b) rolled up the windows of his vehicle. When PO Kreckmann ordered § 87(2)(b) to keep them down, § 87(2)(b) replied, “I already gave my stuff.” PO Kreckmann needed § 87(2)(b) to keep his windows down for safety during the vehicle stop. PO Kreckmann was concerned for his safety because § 87(2)(b)'s uncooperativeness, as well as the way he was reaching around the vehicle, led PO Kreckmann to believe § 87(2)(b) might have been reaching for a “weapon or narcotics.”

An officer – PO Kreckmann did not remember which – ordered § 87(2)(b) to exit the vehicle. PO Kreckmann believed that § 87(2)(b) exited of his own volition. PO Kreckmann was unsure where § 87(2)(b) stood around the vehicle once he was removed from it, but thought he was either at the rear driver side or standing at the trunk. Once § 87(2)(b) was removed from the vehicle, PO Kreckmann entered it through the rear passenger side door and checked it, as that was one of the areas that PO Smalls had specified § 87(2)(b) as reaching into. PO Kreckmann might also have checked the center console, but did not specifically remember doing so, nor did he

remember entering the vehicle through any of its other doors. PO Kreckmann was not inside of the vehicle for long, and did not recall ever entering § 87(2)(b)'s vehicle again thereafter.

PO Kreckmann identified himself on the video footage as the officer standing at § 87(2)(b)'s front passenger window. PO Kreckmann's recollection was not refreshed as to any movements he observed § 87(2)(b) make, or anything he observed inside of the vehicle. PO Kreckmann added that § 87(2)(b)'s rear windows might have been tinted, based upon his observation of their darkness as depicted in the video, though he had no recollection of § 87(2)(b)'s windows being tinted at the time of this incident. PO Kreckmann also identified himself as the officer entering § 87(2)(b)'s vehicle through the rear driver side door, and as the officer entering through § 87(2)(b)'s open driver's seat window, and as the officer opening § 87(2)(b)'s driver's seat door, leaning inside, removing something, possibly the keys, from inside of the vehicle, and placing them upon the roof of the vehicle, but PO Kreckmann had no independent recollection of this, and therefore could not explain what he was doing inside of the vehicle on these three occasions.

PO Smalls (BR 17) believed that he exited the marked police van slightly after PO Kreckmann and PO Lombardi. From the middle seat of the van, PO Smalls was able to see that § 87(2)(b) was reaching around the vehicle; specifically § 87(2)(b) had his torso turned to the right with one of his arms extended from the front seat into the back. PO Smalls could not actually see § 87(2)(b)'s hand, and could not see if § 87(2)(b) held anything in it. After a few seconds, § 87(2)(b) then reached with his right hand to the center console. PO Smalls could not tell if the console was open or closed at that time. § 87(2)(b) then reached again into the backseat with his right hand. PO Smalls did not see if § 87(2)(b) was holding any items as he reached around the vehicle. PO Smalls did not believe any of the windows of § 87(2)(b)'s vehicle were tinted, as he was able to observe § 87(2)(b)'s movements. PO Smalls did not overhear any conversation between PO Lombardi, PO Kreckmann, and § 87(2)(b) except PO Lombardi, who was standing at the driver side, asked § 87(2)(b) to open his windows.

PO Smalls exited the police vehicle and approached on the driver side. As he approached, PO Smalls could see that § 87(2)(b) was bent forward in the driver seat, though he could not see his arms or hands until he came closer and saw that § 87(2)(b)'s right hand appeared to be under the driver seat. PO Smalls then sat back up and turned so that his body faced the right and reached again into the backseat. All windows of the vehicle were still closed when PO Smalls first approached, though § 87(2)(b) eventually rolled down his driver side window. PO Smalls did not remember § 87(2)(b) ever opening the windows of his vehicle and then closing them again. PO Smalls did not remember not being able to see into § 87(2)(b)'s backseat at any point, though he indicated that from where he was standing outside the vehicle he could not see the floor of the backseat, or if § 87(2)(b) had any items underneath the seats.

§ 87(2)(b) refused to provide his license to the officers. PO Smalls characterized him as in general being "combative," as he did not follow instructions to provide his license or open his windows. PO Smalls did not remember if there was anything else "combative" about § 87(2)(b)'s behavior. PO Smalls did not remember when or how § 87(2)(b)'s license was obtained.

Because § 87(2)(b) was moving around the vehicle, officers ordered § 87(2)(b) to exit. When § 87(2)(b) did not do so, officers reached into the vehicle through § 87(2)(b)'s open driver side window, unlocked the door, opened it, and pulled § 87(2)(b) from the vehicle. § 87(2)(b) tried to reach back into the vehicle with his right hand, but PO Smalls stopped him from doing so by grabbing his right hand and placing § 87(2)(b) into handcuffs. § 87(2)(b) was then removed to

the back of the vehicle. PO Smalls denied searching § 87(2)(b)'s vehicle and had no recollection of observing any officer doing so.

PO Smalls reviewed the video footage. PO Smalls identified himself as the officer who appears to be standing at the rear passenger side, and who then goes around the vehicle to § 87(2)(b)'s driver side. In general, reviewing the video footage did not refresh his recollection as to anything that occurred.

§ 87(2)(g)
PO Lombardi believed he was the last officer to exit the police vehicle, as he was driving and had to place the vehicle into park. PO Kreckmann and PO Smalls initially approached § 87(2)(b)'s vehicle on the passenger side, as the driver side was too close to traffic. PO Lombardi saw PO Kreckmann and PO Smalls knocking on the passenger side windows of § 87(2)(b)'s vehicle, but did not otherwise observe the officers' interaction with § 87(2)(b). By the time PO Lombardi exited the police vehicle, PO Smalls and PO Kreckmann were already moving around to the driver side of § 87(2)(b)'s vehicle. As PO Lombardi approached § 87(2)(b)'s vehicle on the driver side, he saw that PO Smalls and PO Kreckmann were both pulling § 87(2)(b) from the vehicle. § 87(2)(b)'s upper torso was turned slightly to the right, so that he faced the center console, which was open. PO Lombardi did not see if § 87(2)(b) had anything in his hands, and could not tell what § 87(2)(b) was doing. PO Lombardi approached and helped pull § 87(2)(b) from the vehicle. PO Lombardi did not recall § 87(2)(b) raising his voice or being uncooperative, though he provided minor resistance to being handcuffed in that tried to keep his arms in front of his torso. PO Lombardi heard an officer – he could not tell which – say that § 87(2)(b) had tried to reach for his center console. PO Lombardi thought that he leaned into the vehicle through its open driver side door once § 87(2)(b) was handcuffed to check the center console to ensure there were no weapons. PO Lombardi said he was inside the vehicle for a matter of seconds as he only looked at the center console, which was still open; PO Lombardi did not search any other areas of the vehicle, and did not see any other officer inside the vehicle. Aside from observing § 87(2)(b) leaning to the console, and hearing an officer say that § 87(2)(b) had reached for it, PO Lombardi had no indication that § 87(2)(b) had a weapon in the vehicle.

PO Lombardi reviewed the video footage. PO Lombardi indicated that he might have been mistaken about searching the vehicle, as he is not depicted at any point entering it, and might be confusing it with another incident. PO Lombardi's recollection was not otherwise refreshed.

According to Maryland v. Wilson, 519 U.S. 48 (1997) (BR 19), an officer may as a matter of course order the occupants of a lawfully stopped vehicle to exit. Under the general automobile exception, an officer must have probable cause to believe that a vehicle contains evidence of a crime, contraband, a weapon, or in order to conduct a warrantless search of the vehicle. As an exception, officers may conduct a limited search of a vehicle to retrieve a weapon if they reasonably believe that the weapon poses an immediate threat to their safety. Once the occupants have been removed from the vehicle and no longer has access to the weapon inside the vehicle, this exception no longer applies, as any immediate threat to safety has been eliminated. People v. Torres, 74 N.Y.2d 224 (1989) (BR 20). A limited search of the area where furtive movements are seen may be justified even if the suspect is unable to gain immediate access to that weapon, provided officers reasonably suspect that a weapon in the vehicle poses a specific threat to their safety. People v. Mundo, 99 N.Y.2d 55 (2002) (BR 21)

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Ricky Smalls issued a summons to § 87(2)(b)

It is undisputed that PO Smalls issued § 87(2)(b) a summons for disorderly conduct.

On the “factual allegations” section of the summons (BR 03), PO Smalls wrote, “At t/p/o defendant refused to follow direct orders on car stop for safety. Defendant yelled at police officers from window, refused to open window, reached all over car, screamed at officers once removed, caused more than five vehicles to stop.” Under the “defendant stated in my presence” section of the summons, PO Smalls wrote, “You stopped me for nothing. I didn’t do anything.”

PO Smalls (BR 17) said that he issued the summons to § 87(2)(b) because § 87(2)(b) yelled, reached around the vehicle, and refused to follow the officers’ instructions. PO Smalls believed that § 87(2)(b)’s behavior caused public alarm and fear because more than five vehicles slowed to a stop on the exit ramp to observe what was going on, to the point that an officer – PO Smalls did not remember which – had to stand at the roadside and direct traffic onwards. § 87(2)(b) was upset upon initial removal from the vehicle in that he raised his voice to officers and protested that he had done nothing wrong. Eventually § 87(2)(b) calmed down, told PO Smalls

that he was coming from work, that he worked as an § 87(2)(b) and thanked PO Smalls for not arresting him.

Video footage does not depict how § 87(2)(b) behaved once he was removed from his vehicle, as he was removed to its rear. Voices are faintly audible in the background, but it is generally not possible to tell who is speaking, or what is being said, over the sound of passing traffic. Numerous vehicles are depicted as driving past § 87(2)(b)'s vehicle throughout the video footage § 87(2)(b) provided (see all above video files (BR 09 to 15)). Some of them appear to slow, but none of them come to a full stop, and it is not possible to tell what causes them to slow from the video footage. No officer is depicted as guiding traffic. When PO Smalls reviewed the video footage, he indicated that this may have been because the officer directing traffic was positioned behind § 87(2)(b)'s vehicle and therefore would not have been visible to the camera. As was discussed above, there is a missing section of video footage from the 10:11:40 p.m. timestamp on the video until 10:26:37 p.m. timestamp.

§ 87(2)(b)'s summons does not appear in OCA. On May 5, 2016, a clerk at Bronx Criminal Court Summons Section confirmed that the summons that PO Smalls issued to § 87(2)(b) was dismissed on February 1, 2016 (BR 06).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: engages in fighting or in violent, tumultuous, or threatening behavior; makes unreasonable noise; uses abusive or obscene language or makes an obscene gesture in a public place; without lawful authority disturbs any lawful assembly or meeting of persons; obstructs vehicular or pedestrian traffic; congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or creates a hazardous or physically offensive condition by any act which serves no legitimate purpose. NYS Penal Law § 240.20 (BR 22)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date